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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SERENA NARO, individually and on behalf of all others similarly situated; TRISH GONZALES, individually and on behalf of all others similarly situated; AND THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY *ex rel.* SERENA NARO AND TRISH GONAZALES, a California governmental entity,

Plaintiff,

v.
WALGREEN CO., an Illinois corporation; and WALGREEN PHARMACY SERVICES MIDWEST, LLC, an Illinois corporation; and DOES 1-15,

Defendants.

} Case No.: 4:22-cv-03170-JST

} Assigned for All Purposes to:
Hon. Jon S. Tigar
Courtroom 6

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA REPRESENTATIVE ACTION
SETTLEMENT**

Date: August 8, 2024
Time: 2:00 P.M.
Dept: 6

Complaint Filed: May 31, 2022

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1 Plaintiffs Serena Naro and Trish Gonzales (“Plaintiffs”) and Defendants Walgreen
 2 Co. and Walgreen Pharmacy Services Midwest, LLC (“Walgreens” or “Defendants,” and
 3 together with Plaintiff, “the Parties”) hereby submit this joint case management statement
 4 pursuant to this Clerk’s Notice Continuing Case Management Conference entered November
 5 6, 2023. *See*, ECF Nos. 56-57.

6 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
 7 RECORD:

8 NOTICE IS HEREBY GIVEN that on August 8, 2024, at 2:00 P.M., or as soon
 9 thereafter as the Court may hear them, in Courtroom 6, 1301 Clay Street, Oakland, CA,
 10 94612, before Hon. Jon S. Tigar of the United States District Court, Northern District of
 11 California, Plaintiffs Serena Naro and Trish Gonazles, on behalf of themselves and all others
 12 similarly situated (“Plaintiffs”), move the Court for preliminary approval of the Class Action
 13 and Private Attorneys General Act Settlement Agreement and Release (the “Settlement
 14 Agreement” or the “Settlement,” attached as **Exhibit 1** to the accompanying Declaration of
 15 Hallie Von Rock). The Settlement resolves all of the claims in this action on a class basis. In
 16 particular, Plaintiffs move for orders:

- 17 (1) Granting preliminary approval of the Settlement Agreement;
- 18 (2) Conditionally certifying the Settlement Class for settlement purposes;
- 19 (3) Approving the proposed schedule and procedure for completing the final
 approval process for the Settlement, including setting the Final Approval Hearing;
- 21 (4) Approving the Class Notice as it pertains to the Class (attached as **Exhibit A** to
 the Settlement Agreement);
- 23 (5) Approving the Postcard Class Notice as it pertains to the Class (attached as
 Exhibit B to the Settlement Agreement);
- 25 (6) Preliminarily appointing and approving Aiman-Smith & Marcy PC as Class
 Counsel for the Settlement Class;
- 27 (7) Preliminarily approving Class Counsel’s request for attorneys’ fees and costs;

(8) Preliminarily appointing and approving Plaintiffs Serena Naro and Trish Gonzales as Class Representatives for the Settlement Class;

(9) Preliminarily appointing and approving Atticus Administration (“Atticus”) as the Settlement Administrator for the Settlement Class; and

(10) Authorizing the Settlement Administrator to mail the approved Class Notice to the Settlement Class as set forth in the Settlement Agreement.

Plaintiffs bring this Motion pursuant to Federal Rules of Civil Procedure 23(e). The Motion is based on this notice, the following Memorandum of Points and Authorities, the Declaration Hallie Von Rock, the Declaration of Jonathan Wilson, and all other records, pleadings, and papers on file in the consolidated action and such other evidence or argument as may be presented to the Court at the hearing on this Motion. Plaintiffs also submit a Proposed Order Granting Preliminary Approval of Class Action Settlement with their moving papers.

Date: June 6, 2024

Respectfully submitted,

/s/ Hallie Von Rock

Hallie Von Rock
AIMAN-SMITH & MARCY PC
Attorneys for Plaintiffs

1 **I. INTRODUCTION**

2 Plaintiffs Serena Naro and Trish Gonzales (collectively “Plaintiffs”), having reached a
 3 class-wide settlement with Defendants Walgreen Co. and Walgreen Pharmacy Services
 4 Midwest, LLC (“Walgreens” or “Defendants,”), seek preliminary approval of the Settlement.
 5 After almost two years of litigation, including formal discovery, a motion to dismiss and
 6 amendment to the complaint, informal settlement discovery, detailed expert calculations, and
 7 extensive arm’s-length negotiations between counsel, the Parties have reached a global
 8 settlement of the Action, memorialized in the proposed Class Action and Private Attorneys
 9 General Act Settlement Agreement and Release (“Settlement”).¹

10 Plaintiffs brought this class and Private Attorneys General Act action on behalf of
 11 current and former non-exempt workers employed by Defendants in their retail stores and/or
 12 pharmacies in California (the “Class Members”). Plaintiffs contend that Defendants violated
 13 California wage and hour laws by requiring Class Members to wear and purchase uniforms
 14 and allege that Defendants failed to compensate Class Members for such uniforms, which
 15 resulted in violation of California Labor Code section 2802.

16 The Settlement resolves the class claims for approximately 12,553 Class Members for a
 17 total non-reversionary settlement of \$950,000. With this Settlement, the Parties are resolving
 18 wage and hour claims unlikely to have been prosecuted as individual actions. The Settlement
 19 is fair, reasonable, and adequate in all respects, and Plaintiffs respectfully request that the
 20 Court grant the requested approval.

21 **II. FACTUAL BACKGROUND**

22 Plaintiffs and Class Members are those individuals who, according to Defendants’
 23 third-party vendor records, purchased clothing at their own expense from Defendants’ third-
 24 party vendors during the Class Period, which runs from May 31, 2018 through preliminary
 25 approval. HVR Dec. ¶ 3, Settlement Agreement ¶ 10.c. The Settlement Class is comprised of
 26

27 ¹ The Settlement is attached as **Exhibit 1** to the accompanying Declaration of Hallie Von Rock (“HVR Dec.”) in Support
 28 of Plaintiffs’ Motion for Preliminary Approval of Class and PAGA Representative Action Settlement.

1 approximately 12,553 individuals. HVR Dec. ¶ 4; Declaration of Jonathan Wilson (“Wilson
 2 Dec.”) ¶ 8.

3 Plaintiffs allege that Class Members experienced wage and hour violations in their
 4 work for Defendants. HVR Dec. ¶ 5. In particular, Plaintiffs allege that during the Class
 5 Period, Defendants required Class Members to report to work wearing uniform clothing
 6 items, which are in a specified style and color and/or which bear the Walgreens logo. *Id.*
 7 Plaintiffs alleged that while Defendants provided Class Members with an initial set of
 8 Walgreens logo clothing items at the start of their employment, Defendants neither provided
 9 Class Members with a sufficient number of replacement items after the initial items were
 10 rendered unusable by normal wear and tear, nor did Defendants reimburse Class Members
 11 for required replacement purchases. Plaintiffs who wished to wear a jacket or other layers for
 12 warmth were also required to buy and wear Walgreens-branded clothing items. After this
 13 Action was filed, Defendants changed their dress code policy, in September 2022, to no
 14 longer require that Class Members wear Walgreens logo tops, jackets, or scrubs. *Id.*, ¶ 6.

15 As a result of Defendants’ dress code policies, Plaintiffs’ operative First Amended
 16 Complaint alleged causes of action for failure to reimburse necessary business expenses
 17 (Cal. Lab. Code § 2802); Unfair Competition (Cal. Bus. & Prof. Code § 17200, et seq.); and
 18 Private Attorneys General Act (Cal. Lab. Code § 2698, et seq.).

19 Defendants have at all times denied, and continue to deny, all of these allegations, and
 20 deny any and all liability for Plaintiffs’ claims. They further deny that Plaintiffs’ allegations
 21 are appropriate for class and/or representative treatment for any purpose other than for
 22 settlement purposes.

23 III. PROCEDURAL HISTORY

24 A. Plaintiffs’ Claims

25 On March 16, 2022, Plaintiffs Serena Naro and Trish Gonzales sent a letter to the
 26 California Labor and Workforce Development Agency (“LWDA”) and to Defendants giving
 27 notice of their intent to pursue a representative action pursuant to the California Labor Code
 28

1 Private Attorneys General Act of 2004, codified at Labor Code § 2698, et seq. (“PAGA”), on
 2 behalf of themselves and the State of California as well as on behalf of a proposed group of
 3 allegedly aggrieved employees. In the letter, Plaintiffs claimed Defendants violated the
 4 Industrial Welfare Commission Wage Order and California Labor Code sections 204/204b,
 5 221, 223, 226, 510, 1197, and 2802 and the related IWC Wage Order No. 7.

6 On May 31, 2022, Plaintiffs filed a class action Complaint in this Court that included
 7 causes of action for Failure to Indemnify Business Expenses (Labor Code §2802); Failure to
 8 Reimburse for Required Uniforms (IWC Wage Order 7, § 9 (A)); Failure to Pay Minimum
 9 Wage (Labor Code §§ 1194, 1194.2, 1197, IWC Wage Order No. 7, § 4(A)); Failure to
 10 Furnish Accurate Wage Statements (Labor Code § 226); Waiting Time Penalties (Labor
 11 Code §§ 201, 202, and 203); Unfair Business Practices (Business and Professions Code §
 12 17200, et seq); and Penalties under the Private Attorneys General Act (“PAGA”) (Labor
 13 Code § 2698, et seq). (ECF 1).

14 On July 5, 2022, Defendants filed a Motion to Dismiss Plaintiffs’ Complaint. (ECF
 15 8). On July 19, 2022, Plaintiffs filed their Opposition to the Motion to Dismiss. (ECF 18)
 16 On February 9, 2023, the Court granted Defendants’ Motion to Dismiss Plaintiffs’ wage
 17 claims, specifically the claims for the Failure to Pay Minimum Wage (Labor Code §§ 1194,
 18 1194.,2, 1197, IWC Wage Order No. 7, § 4(A)); Failure to Furnish Accurate Wage
 19 Statements (Labor Code § 226); and Waiting Time Penalties (Labor Code §§ 201, 202, and
 20 203). (ECF 32).

21 On February 23, 2023, Plaintiffs filed the operative First Amended Complaint for
 22 Failure to Indemnify Business Expenses (Labor Code §2802); Unfair Business Practices
 23 (Business and Professions Code § 17200, et seq); and Penalties under the Private Attorneys
 24 General Act (“PAGA”) (Labor Code § 2698, et seq). (ECF 33).

25 On March 16, 2023, Defendants filed their Answer to First Amended Complaint.
 26 (ECF 38).
 27
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1 B. Discovery

2 The Parties engaged in formal written discovery, including Plaintiff serving two sets of
 3 special interrogatories and requests for production of documents, and Defendant serving
 4 interrogatories and requests for production of documents on both plaintiffs. The depositions
 5 of both Plaintiffs were taken as well as the deposition of one of Plaintiff's former supervisors
 6 who worked for Defendants. HVR Dec. ¶ 7.

7 Defendants produced their policies related to their dress code during the Class Period.
 8 *Id.* ¶ 8. Defendants also produced documents and data related to vouchers that were
 9 distributed to store managers for replacing Walgreen logo shirts and scrubs for Class
 10 Members.

11 Plaintiffs served subpoenas on third-party vendors of Defendants, which produced
 12 records showing all current and former non-exempt employees of Defendants working in
 13 Defendants' retail stores and/or pharmacies within California who purchased clothing items
 14 at their own expense from one of Walgreens' third-party clothing vendors during the Class
 15 and PAGA periods. *Id.* ¶ 9.

16 Additionally, Defendants engaged the expert Resolution Economics LLC, to calculate
 17 the purchases identified in the data provided by the third-party vendors of Defendants and to
 18 perform an exposure analysis. The Plaintiffs reviewed the detailed expert analysis performed
 19 and the parties agreed that the data was an accurate calculation of damages to form the basis
 20 of the Parties' settlement negotiations. *Id.* ¶ 10. The Declaration of Jonathan Wilson is being
 21 submitted with this motion describing the calculations conducted.

22 Plaintiffs and their counsel have conducted sufficient discovery and analysis to evaluate
 23 the strengths and weaknesses of their respective claims and Defendants' defenses and to
 24 recommend this Settlement to the Class Members and the Court. HVR Dec., ¶ 11.

25 C. Settlement Negotiations

26 The Parties initially agreed to mediate with Michael Dickstein on March 28, 2024.
 27 HVR Dec., ¶ 12. Prior to the mediation, the parties participated in a conference call with Mr.
 28

1 Dickstein on January 17, 2024, which included discussions of data to be produced for
 2 settlement negotiations. *Id.* Following this call, Defendants produced detailed damages data,
 3 and counsel for the parties met and conferred regarding the extent of the damages at issue.
 4 *Id.* The parties were largely in agreement regarding the potential exposure in the case and
 5 believed that it was possible to resolve the case without a mediator. *Id.*

6 Thereafter, the parties went back and forth for three months with their respective
 7 positions, including Defendants' defenses and Plaintiffs' replies thereto. Several issues arose
 8 during the negotiations, including but not limited to Defendants' contention that two prior
 9 settlements that released Labor Code section 2802 claims limited the Class Period and that a
 10 pending class action settlement included a release for Labor Code section 2802 claims that
 11 potentially overlapped with Plaintiffs' claims, here. *Id.*, ¶ 13. Additionally, the data produced
 12 showed that a significant number of uniform items ordered during the Class Period were paid
 13 for with vouchers supplied by Walgreens and, thus, were not expenses borne by the Class
 14 Members. *Id.*, ¶ 14. At the same time, the data confirmed that Class Members did use their
 15 own money to purchase over \$435,000 in required Walgreens logo clothing items during the
 16 Class Period. *Id.*

17 Given the risks that both sides faced, after multiple offers and counteroffers were
 18 exchanged between February and March, the parties agreed to settle this Action for \$950,000
 19 on March 28, 2024. *Id.*, ¶ 15. A Memorandum of Understanding was fully executed on April
 20 8, 2024. *Id.*

21 After the agreement to settle, counsel for the Parties extensively met and conferred over
 22 the detailed terms of the settlement for purposes of executing a long-form settlement
 23 agreement and worked to finalize the Settlement Agreement and corresponding notice
 24 documents, subject to the Court's approval. HVR Dec., ¶ 16. The Settlement Agreement was
 25 fully executed on May 8, 2024. *Id.*

26 The parties informed the Court in a Joint Case Management Statement filed on April 8,
 27 2024, that the case had settled. (ECF 58). The Court entered a scheduling order on April 9,
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1 2024, ordering a Motion for Preliminary Approval of Class Settlement to be filed by June 7,
 2 2024. (ECF 59).

3 **IV. ARGUMENT**

4 A. The Court Should Grant Preliminary Approval of the Settlement

5 Rule 23(e) provides that any compromise of a class action must receive court
 6 approval. The court has broad discretion to grant approval and should do so where the
 7 proposed settlement is “fair, adequate, reasonable, and not a product of collusion.” *Hanlon v.*
 8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). In deciding whether a settlement
 9 should be approved, the Ninth Circuit has a “strong judicial policy that favors settlement,
 10 particularly where complex class action litigation is concerned.” *In re Heritage Bond*
 11 *Litigation*, 2005 WL 1594403 (C.D. Cal. 2005); *see also, Class Plaintiffs v. City of Seattle*,
 12 955 F.2d 1268, 1276 (9th Cir. 1992) (The Ninth Circuit maintains a “strong judicial policy”
 13 that favors settlement of class actions.). Rule 23 requires that all class action settlements
 14 satisfy two primary prerequisites before a court may grant certification for purposes of
 15 preliminary approval: (1) that the settlement class meets the requirements for class
 16 certification if it has not yet been certified; and (2) that the settlement is fair, reasonable, and
 17 adequate. Fed.R.Civ.P. 23(a), (e)(2); *Hanlon*, 150 F.3d at 1020. As discussed below, this
 18 class action settlement satisfies the requirements of Rule 23(a) and (b), and it is fair,
 19 reasonable, and adequate in accordance with Rule 23(e)(2). HVR Dec., ¶ 17. Accordingly,
 20 the Court should preliminarily approve the Settlement.

21 B. The Court Should Certify the Settlement Class²

22 A class may be certified under Rule 23 if (1) the class is so numerous that joinder of
 23 all members individually is “impracticable”; (2) questions of law or fact are common to the
 24 class; (3) the claims or defenses of the class representative are typical of the claims or

27 2 Plaintiffs acknowledge that, in the event that the Settlement is not approved by the Court, class certification would be
 28 contested by Defendants, and Defendants fully reserve and do not waive any arguments and challenges regarding the
 propriety of class action certification.

1 defenses of the class; and (4) the person representing the class is able to fairly and adequately
 2 protect the interests of all members of the class. Fed.R.Civ.P. 23(a). Furthermore, Rule
 3 23(b)(3) provides that a class action seeking monetary relief may only be maintained if “the
 4 court finds that the questions of law or fact common to class members predominate over any
 5 questions affecting only individual members, and that a class action is superior to other
 6 available methods for fairly and efficiently adjudicating the controversy.” Fed.R.Civ.P.
 7 23(b)(3). Applying this standard, numerous cases similar to this case have certified classes of
 8 employees who have suffered wage and hour violations under California wage and hour
 9 laws.³ Likewise, Plaintiffs contend that the Settlement Class meets all of these requirements.

10 1. *The Class Members are numerous and ascertainable.*

11 The numerosity prerequisite demands that a class be large enough that joinder of all
 12 members would be impracticable. Fed.R.Civ.P. 23(a)(1). Courts routinely find numerosity
 13 satisfied with classes of at least forty members. *See, e.g., Ikonen v. Hartz Mountain Corp.*,
 14 122 F.R.D. 258, 262 (S.D. Cal. 1988); *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D.
 15 474, 485 (E.D. Cal. 2006). The approximately 12,553 Class Members render the class so
 16 large as to make joinder impracticable. HVR Dec., ¶ 18. The Class Members are readily
 17 identifiable from Defendants’ payroll records and third-party vendor data of purchases made
 18 during the Class Period. *Id.*

19 2. *Plaintiffs’ claims raise common issues of fact or law.*

20 The commonality requirement of Rule 23(a)(2) “is met if there is at least one common
 21 question or law or fact.” *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 467 (E.D. Pa. 2000).
 22 Plaintiffs “need not show that every question in the case, or even a preponderance of
 23 questions, is capable of classwide resolution.” *Wang v. Chinese Daily News, Inc.*, 737 F.3d
 24 538, 544 (9th Cir. 2013). “[E]ven a single common question” can satisfy the commonality

26 27 3 *See, e.g., Brown, et al. v. Abercrombie & Fitch Co., et al.*, No. 2:14-cv-01242-JGB-VBK (N.D. Cal. July 16, 2015),
 *ECF 108 (certifying Rule 23 class in a case asserting uniform expense reimbursement violations); *Nucci, et al. v. Rite
 Aid Corporation*, No. 5:19-cv-01434-LHK (N.D. Cal. June 14, 2020) *ECF 69 (certifying Rule 23 class in a case
 asserting uniform expense reimbursement violations).

1 requirement of Rule 23(a)(2). *Id.*

2 Plaintiffs contend that common questions of law and fact predominate here. The wage
 3 and hour violations at issue are borne of Defendants' standardized policies, practices, and
 4 procedures regarding their dress code policy during the Class Period and failure to reimburse
 5 for personal purchases of clothing from Walgreens' third-party clothing vendors, creating
 6 pervasive issues of fact and law that are amenable to resolution on a class-wide basis. HVR
 7 Dec., ¶ 19. Because these questions can be resolved at the same juncture, Plaintiffs contend
 8 the commonality requirement is satisfied for the Class. *Id.*

9 3. *Plaintiffs' claims are typical of the claims of the Class.*

10 “Rule 23(a)(3) requires that the claims of the named parties be typical of the claims
 11 of the members of the class.” *Fry*, 198 F.R.D. at 468. “[A] representative’s claims are
 12 ‘typical’ if they are reasonably coextensive with those of absent class members; they need
 13 not be substantially identical.” *Hanlon*, 150 F.3d at 1020. Here, Plaintiffs contend that their
 14 claims are typical of those of all other Class Members in that they purchased clothing from
 15 Walgreens’ third-party vendors without reimbursement. HVR Dec., ¶ 20. Thus, Plaintiffs
 16 contend that the typicality requirement is also satisfied. *Id.*

17 4. *Plaintiffs and Class Counsel will adequately represent the
 18 Class.*

19 To meet the adequacy of representation requirement in Rule 23(a)(4), Plaintiffs must
 20 show “(1) that the putative named plaintiff has the ability and the incentive to represent the
 21 claims of the class vigorously; (2) that he or she has obtained adequate counsel, and (3) that
 22 there is no conflict between the individual’s claims and those asserted on behalf of the
 23 class.” *Fry*, 198 F.R.D. at 469. Plaintiffs’ claims are in line with the claims of the Class
 24 Members, and Plaintiffs’ claims are not antagonistic to the claims of Class Members. HVR
 25 Dec., ¶ 21. Plaintiffs have prosecuted this case with the interests of the Class Members in
 26 mind. *Id.* Moreover, Class Counsel has extensive experience in class action and
 27 employment litigation, including wage and hour class actions, and do not have any conflict
 28 with the Class. *Id.*

1 5. *The Rule 23(b)(3) requirements for class certification are*
 2 *also met.*

3 Under Rule 23(b)(3), Plaintiffs must demonstrate that common questions
 4 “predominate over any questions affecting only individual members” and that a class action
 5 is “superior to other available methods for fairly and efficiently adjudicating the
 6 controversy.” “The predominance analysis under Rule 23(b)(3) focuses on ‘the relationship
 7 between the common and individual issues’ in the case and ‘tests whether proposed classes
 8 are sufficiently cohesive to warrant adjudication by representation.’” *Wang*, 737 F.3d at 545.

9 Here, Plaintiffs contend the common questions raised in this action predominate over
 10 any individualized questions concerning the Class Members. HVR Dec., ¶ 22. The Class is
 11 entirely cohesive because resolution of Plaintiffs’ claims hinge on the uniform policies and
 12 practices of Defendants, rather than the treatment the Class Members experienced on an
 13 individual level. *Id.* Namely, the predominate questions relate to whether Class Members are
 14 entitled to be compensated for the personal purchases made of clothing to comply with
 15 Walgreens’ dress code policy. As a result, Plaintiffs contend that the resolution of these
 16 alleged class claims would be achieved through the use of common forms of proof, such as
 17 Defendants’ policies, and would not require inquiries specific to individual Class Members.
Id.

18 Further, Plaintiffs contend that the class action mechanism is a superior method of
 19 adjudication compared to a multitude of individual suits. *Id.*, ¶ 23. To determine whether the
 20 class approach is superior, courts are to consider: (A) the class members’ interests in
 21 individually controlling the prosecution or defense of separate actions; (B) the extent and
 22 nature of any litigation concerning the controversy already begun by or against class
 23 members; (C) the desirability or undesirability of concentrating the litigation of the claims in
 24 the particular forum; and (D) the likely difficulties in managing a class action. Fed.R.Civ.P.
 25 23(b)(3)(A)-(D).

26 Here, the Class Members do not have a strong interest in controlling their individual
 27 claims. HVR Dec., ¶ 23. The action involves thousands of workers with very similar, but
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1 relatively small, claims for monetary injury. *Id.* If the Class Members proceeded on their
 2 claims as individuals, their many individual suits would require duplicative discovery and
 3 duplicative litigation, and each Class Member would have to personally participate in the
 4 litigation effort to an extent that would never be required in a class proceeding. *Id.* Thus,
 5 Plaintiffs contend that the class action mechanism would efficiently resolve numerous
 6 substantially identical claims at the same time while avoiding a waste of judicial resources
 7 and eliminating the possibility of conflicting decisions from repetitious litigation and
 8 arbitrations. *Id.* Thus, the issues raised by the present case are much better handled
 9 collectively by way of a settlement. *Id.*

10 C. The Terms of the Settlement Are Fair, Reasonable, and Adequate.

11 In evaluating the fairness of a proposed settlement, courts compare the settlement
 12 amount with the estimated maximum damages recoverable in a successful litigation. *In re*
 13 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.2000). Courts routinely approve
 14 settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for*
 15 *Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 623 (9th Cir. 1982); *Viceral v. Mistras Grp.*,
 16 *Inc.*, Case No. 15-cv-2198-EMC, 2016 WL 5907869, at *7 (N.D. Cal. Oct. 11, 2016)
 17 (approving wage and hour settlement which represented 8.1% of the total verdict value). A
 18 review of the Settlement Agreement reveals the fairness, reasonableness, and adequacy of its
 19 terms. HVR Dec., ¶ 24. The Gross Settlement Common Fund of \$950,000 represents 100%
 20 of the unreimbursed business expenses plus interest (\$514,809)⁴, plus an additional
 21 \$435,191, representing 26% of the approximately \$1,655,900 in maximum PAGA penalties.
 22 *Id.*; Wilson Dec., ¶ 11, Table 3.

23 Again, these figures are based on Plaintiffs' assessment of a best-case-scenario. HVR
 24 Dec., ¶ 25. To obtain such a result at trial, Plaintiffs would have to prove that Walgreens did
 25 not provide sufficient replacement shirts and scrubs to each Class Member and that Class
 26

27 ⁴ This amount excludes voluntary purchases of clothing items not required by Walgreens' dress code policy, such as Red
 28 Nose Day and holiday t-shirts.

1 Members purchased the uniform clothing items as a condition of work, rather than their own
 2 convenience to have multiple uniform items to avoid laundering their items or other personal
 3 reasons. *Id.* These issues would of course be disputed and hotly contested. *Id.*

4 The final settlement amount takes into account the substantial risks inherent in any
 5 class action wage and hour case, as well as the hurdles of achieving and maintaining class
 6 action status, and the specific defenses asserted by Defendants, including that Walgreens
 7 provided a sufficient number of uniform items to Class Members. *Id.*, ¶ 26; *see Officers for
 8 Justice*, 688 F.2d at 623. By obtaining 100% of the unreimbursed clothing purchases for
 9 dress-code required items plus over 26% of potential PAGA penalties, which were subject to
 10 the Court's reduction from the maximum PAGA penalties, the settlement is fair, reasonable,
 11 and adequate. HVR Dec., ¶ 26.

12 **V. THE PROPOSED SETTLEMENT MEETS THE NORTHERN DISTRICT OF
 13 CALIFORNIA'S PROCEDURAL GUIDELINES FOR CLASS ACTION
 14 SETTLEMENTS**

15 As outlined herein, the proposed settlement meets each of the criteria outlined in the
 16 Northern District of California's Procedural Guidelines for Class Action Settlements.
 17 Pursuant to this Court's Standing Order for All Civil Cases Before District Judge Jon S.
 18 Tigar, each of the respective guidelines are addressed in the order the guidelines are
 19 presented on the Northern District of California's website.

20 A. Information About the Settlement

21 1. *Settlement Class*

22 In the operative First Amended Complaint, the Class is defined as:

23 All non-exempt employees of Walgreens working in Walgreens' retail stores
 24 and/or pharmacies within California at any time during the period beginning
 25 four years prior to the date this action is filed, and continuing through to entry
 of judgment in this action.

26 The Settlement Class to be certified for settlement purposes only under Federal Rule
 27 of Civil Procedure 23, is defined as:
 28

1 All current and former non-exempt employees of Defendants working in
 2 Defendants' retail stores and/or pharmacies within California who purchased
 3 clothing items at their own expense from one of Walgreens' third-party
 4 clothing vendors during the Class Period, which runs from May 31, 2018
 through the date of preliminary approval.

5 Settlement Agreement, ¶¶ 10.b, c.

6 The difference in the definition for the Settlement Class is appropriate because it
 7 includes only those non-exempt employees who actually made purchases during the Class
 8 Period and were alleged to be owed reimbursed business expenses. HVR Dec., ¶ 27. An
 9 employee who did not spend personal funds on clothing purchases did not suffer any injury
 10 and would, therefore, not be entitled to any expense reimbursements. *Id.*

11 2. *Released Claims*

12 There are no differences between the claims to be released and the claims in the
 13 operative complaint. The scope of the release is as follows.

14 **Release by Class Members:** Upon the Court's final approval of the
 15 Settlement Agreement, and except as to such rights or claims as may be
 16 created by the Settlement Agreement, the Class Representatives and the
 17 Class Members (other than those who submit timely and valid exclusion
 18 forms) release and discharge the Defendants and each of their respective
 19 former and present parents, subsidiaries, holding companies and affiliated
 20 corporations and entities, and each of their respective former and present
 21 officers, directors, owners, managers, employees, partners, shareholders,
 22 members, and agents, and any other predecessors, successors, assigns or
 23 legal representatives (collectively "the Released Parties"), from any and all
 24 claims for reimbursement of business expenses (Labor Code Section 2802)
 25 and unfair business practices (Bus. & Prof. Code sections 17200 et seq.),
 26 arising from the facts as alleged in the First Amended Complaint from four
 27 years preceding the filing of Plaintiff's original complaint up to the date of
 28 preliminary approval (i.e., from May 31, 2018) (collectively, "Class
 Members' Released Claims").

Release by Aggrieved Employees: Upon the Court's final approval of the
 Settlement Agreement, and except as to such rights or claims as may be
 created by the Settlement Agreement, the Aggrieved Employees shall be
 bound by the release as to any Released PAGA claims that arise during the
 PAGA Period, pursuant to Labor Code section 2698, et seq., from any and
 all claims for reimbursement of business expenses (Labor Code Section

1 2802) arising from the facts as alleged in the First Amended Complaint and
 2 Plaintiffs' PAGA Notice to the LWDA from one year preceding the filing of
 3 Plaintiffs' PAGA Notice (i.e., from March 16, 2021) (collectively,
 "Aggrieved Employees' Released Claims").

4 **Release by Plaintiffs on Behalf of the LWDA (and State of California):**
 5 In their capacity as private attorneys general "aggrieved employees" acting
 6 on behalf of themselves and as proxies or agents of the LWDA and State of
 7 California, Plaintiffs agree to release Defendants and the Released Parties,
 8 from any and all PAGA Claims asserted in Plaintiffs' PAGA Notice to the
 9 LWDA against the Released Parties during the PAGA Period. Upon approval
 10 of this Agreement, Plaintiffs, the LWDA, the State of California, and any
 11 other individual or entity acting on behalf of or purporting to act on behalf of
 12 the LWDA and/or the State shall be barred from asserting any of the Released
 13 PAGA Claims in any future litigation, arbitration, or other legal forum. Any
 14 party to this Agreement may use the Agreement to assert that this Agreement
 15 and the Judgment to be entered by the Court following approval of this
 16 Agreement bars or limits any pending or later-filed action asserting any of
 17 the Released PAGA Claims against any of the Released Parties. The
 18 provisions of this paragraph apply regardless of whether Plaintiffs and/or the
 19 Aggrieved Employees cash their Individual PAGA Payment checks.

20 **Release by Named Plaintiffs:** In consideration for the service payments
 21 being paid to Plaintiffs, Plaintiffs, upon the Court's final approval of the
 22 Settlement Agreement, hereby fully and finally release and discharge the
 23 Released Parties from all known and unknown claims they have or may have
 24 against the Released Parties, of every nature and description whatsoever, up
 25 to the date of the Court's final approval of the Settlement Agreement, in
 26 addition to the Class Members'/Aggrieved Employees' Released Claims
 27 described in the paragraphs 15 and 16. This general release of claims includes
 28 any and all known or unknown contract, tort, statutory, common law,
 constitutional, discrimination, public policy, retaliation, wrongful discharge
 and other claims of any type whatsoever, to the fullest extent such claims are
 releasable by law, arising out of Plaintiffs' employment with Defendants and
 the Released Parties (collectively "Named Plaintiffs' Released Claims"). As
 to the Named Plaintiffs' Released Claims, the Plaintiffs, understanding the
 significance of this waiver, waive all rights and benefits afforded by Section
 1542 of the Civil Code.

29 *See, Settlement Agreement, ¶¶ 14-17.*

1 B. The Proposed Settlement Is a Reasonable Compromise of Claims.

2 Defendants have agreed to pay a non-reversionary Gross Settlement Amount of
 3 \$950,000 to settle all aspects of the case. Settlement Agreement ¶ 23. The Net Settlement
 4 Amount is defined as the Gross Settlement Common Fund of Nine Hundred Fifty Thousand
 5 Dollars and Zero Cents (\$950,000.00) less the following deductions: The sum of Twenty
 6 Thousand Dollars and Zero Cents (\$20,000.00) for the representative payment awards to
 7 Plaintiffs, with Ten Thousand Dollars and Zero Cents (\$10,000.00) to be paid each to Serena
 8 Naro and Trish Gonzales, or such other amount as approved by the Court; the sum of
 9 attorneys' fees to Class Counsel, which shall not exceed Three Hundred Sixteen Thousand
 10 and Six Hundred Sixty-Six Dollars and Zero Cents (\$316,666.00); the sum of costs of
 11 litigation to Class Counsel, which shall not exceed Twenty Thousand Dollars and Zero Cents
 12 (\$20,000.00); Seventy Five Thousand Dollars and Zero Cents (\$75,000.00), which is 75% of
 13 the One Hundred Thousand Dollars and Zero Cents (\$100,000.00) earmarked for the release
 14 of Representative Plaintiffs' and each Aggrieved Employees' PAGA claims, and which will
 15 be paid to the California Labor and Workforce Development Agency; the administrative
 16 expenses approved by the Court pursuant to this Agreement, up to Forty Five Thousand
 17 Dollars and Zero Cents (\$45,000.00) (*current bid is for \$32,500). Settlement Agreement ¶
 18 12 (e).

19 The net settlement fund is comprised of two parts: (1) the "Net PAGA Settlement
 20 Amount" (i.e., the \$25,000.00 earmarked for the release of Representative Plaintiffs' and
 21 each PAGA Aggrieved Employee's PAGA claims that is not payable to the California Labor
 22 and Workforce Development Agency); and (2) the "Net Class Settlement Amount" (i.e., the
 23 entire Net Settlement Amount less the Net PAGA Settlement Amount, which is
 24 approximately \$473,334.00). Settlement Agreement ¶ 12.e.⁵

25 The Gross Settlement Amount is a negotiated amount that resulted from substantial
 26

27 ⁵ If the settlement administration cost does not exceed \$32,500, the Net Class Settlement Amount will raise to \$485,834.

1 arms' length negotiations and significant investigation and analysis by both parties. HVR
 2 Dec., ¶ 28. The parties based their damages analysis and settlement negotiations on the
 3 expert analysis provided by Resolution Economics, LLC. *Id.* The data that formed the basis
 4 of the uniform clothing purchase calculations included Walgreen clothing item order
 5 information from third-party vendor HPI from September 29, 2017 to September 17, 2020;
 6 Walgreen clothing item order information from Microsoft Access Database from August 7,
 7 2020 to May 7, 2021; Walgreen clothing item order information from third-party vendor
 8 High Performance Uniforms (HPU) from August 24, 2021 to March 20, 2023; payroll data
 9 from WPM's SAP system for all employees from May 31, 2018 to March 22, 2023; payroll
 10 deduction data from January 3, 2018 to July 12, 2023; and employee job history data for all
 11 California employees from 2018 through 2023. Wilson Dec., ¶ 4.

12 According to the data, 12,553 class members purchased a garment at their own expense
 13 during the class period. *Id.*, ¶ 8. In order to determine the amount paid for each line item in
 14 an order, the unit price was multiplied by the quantity and then added to the sales tax and
 15 shipping. *Id.*, ¶ 9. For the period of time with missing order data, May 8, 2021 – October 16,
 16 2021, the amount spent on personal orders was estimated separately. *Id.* According to the
 17 payroll deduction dataset, deductions for clothing items purchases from a third-party vendor
 18 by putative class member during the period were approximately \$40,037. *Id.* The total
 19 extrapolated amount for credit card purchases is \$5,615. *Id.* The total estimated personal
 20 amount spent on clothing items during the class period is \$859,994. *Id.*, ¶ 10.

21 However, within the data were clothing items considered "voluntary purchases," such
 22 as Red Nose Day, diversity, and holiday t-shirts. *Id.*, ¶ 11. These t-shirts are not considered a
 23 uniform or necessary business expense, but rather, Walgreen permitted employees to
 24 purchase and wear these t-shirts during specific periods during the year in place of the
 25 Walgreen logo polo shirts, if the employee preferred to do so. HVR Dec., ¶ 29. When
 26 excluding voluntary purchases from the analysis, there are 9,727 employees who personally
 27 paid for a clothing item order during the class period, which reduces the total estimated
 28

1 personal amount spent on clothing items during the class period down to \$435,000, and with
 2 interest totaled \$514,809. Wilson Dec., ¶ 11.

3 As for PAGA penalties, when excluding voluntary purchases, there were 7,379
 4 employees with a personal purchase order during the PAGA period. *Id.*, ¶ 11. Assuming a
 5 \$100 penalty for the first pay period with a clothing purchase not reimbursed and \$200
 6 penalty for subsequent pay periods with personal purchases, the total for the PAGA
 7 reimbursement claim during the PAGA period is \$1,655,900. Wilson Dec., ¶ 11, Table 3.

8 Thus, the maximum class and PAGA exposure was \$2,170,709. HVR Dec., ¶ 30;
 9 Wilson Dec., ¶ 11, Table 3. Defendants took the position, however, that this exposure should
 10 be reduced to \$1,654,350, based upon earlier settled actions that released Labor Code section
 11 2802 claims during the Class Period (*President, et al. v. Walgreen Co.*, Santa Clara Superior
 12 Court Case No. 20CV368984, class action settlement Judgment entered on 10/19/23, and
 13 *Epstein v. Walgreen Pharmacy Services Midwest, LLC, et al.*, Central District Case No.
 14 5:19-cv-01323-DOC-ADS, class action settlement Judgment entered 4/15/21). HVR Dec., ¶
 15 30.

16 The Gross Settlement Amount of \$950,000 represents more than 43% of the total
 17 exposure, and 57% of the exposure if excluding previous settlements. *Id.*, ¶ 31. These total
 18 exposures include the maximum PAGA penalties and Plaintiffs are reticent that the court has
 19 discretion to reduce PAGA penalties. For example, in *Carrington v. Starbucks Corp.*, 30
 20 Cal.App.5th 504, 517, 529 (2018), the trial Court reduced the PAGA penalty amount to only
 21 \$150,000 (\$5 per violation).

22 Further, Defendants argued that the initial Walgreen logo shirts and scrubs provided at
 23 hiring, along with annual vouchers they provided for replacements, were sufficient to comply
 24 with Defendants' dress code policy. *Id.*, ¶ 32. Defendants argued that any additional clothing
 25 purchases were not required, but were done so for class members' personal desire to have
 26 multiple clothing options to wear. *Id.* If the Court had sided with Defendants on their
 27 defenses, Class Members would not receive any damages or penalties. *Id.*
 28

1 The Settlement will result in immediate and certain payment to Class Members of
 2 meaningful amounts. *Id.*, ¶ 33. Class Members spent an average of \$61.53 on required
 3 clothing items. Wilson Dec. ¶ 9. With the Net Class Settlement Amount of \$473,334, the
 4 average class recovery is \$37.70 (or \$38.70 if Settlement Administration Costs do not raise).
 5 Thus, the average recovery is over 61% of the average purchase amount, which is an
 6 excellent compromise without the prolonged delays of class certification and trial. HVR
 7 Dec., ¶ 33.

8 Additionally, there are approximately 7,379 Aggrieved Employees who made
 9 purchases during the PAGA period. Wilson Dec. ¶ 11. The Net PAGA Settlement Amount of
 10 \$25,000 will be distributed to the Aggrieved Employees, which calculates to an average of
 11 \$3.39 per Aggrieved Employee in PAGA penalties. HVR Dec., ¶ 34

12 Thus, the settlement amount provides significant compensation to the Class Members
 13 and Aggrieved Employees in the face of expanding and uncertain litigation. HVR Dec. ¶ 35.

14 In light of all of the risks, the settlement amount is fair, reasonable, and adequate. *Id.*
 15 Such a result will benefit the Parties and the court system. *Id.*, ¶ 36. It will bring finality to
 16 the Action and will foreclose the inevitability of expanding litigation. *Id.*

17 C. Cases Affected by the Settlement.

18 There are no pending cases the parties are aware of that would be affected by this
 19 settlement. *Id.*, ¶ 37. There is a related pending class action in the process of settling that
 20 includes a class of pharmacy techs with a Labor Code Section 2802 release (*Gamarro v.*
 21 *Walgreen Pharmacy Services Midwest*, Riverside Superior Court Case No. CVRI22033).
 22 However, pharmacy tech Class Members will be permitted to participate in both cases. *Id.*

23 D. The Proposed Allocation Plan.

24 The Net Settlement Amount is comprised of two parts: (1) the “Net PAGA Settlement
 25 Amount” (i.e., the \$25,000.00 earmarked for the release of Representative Plaintiffs’ and
 26 each PAGA Aggrieved Employee’s PAGA claims that is not payable to the California Labor
 27 and Workforce Development Agency); and (2) the “Net Class Settlement Amount” (i.e., the
 28

1 entire Net Settlement Amount less the Net PAGA Settlement Amount, which is
 2 approximately \$473,334.00). Settlement Agreement, ¶ 12.f; HVR Dec. ¶ 38.

3 The distribution formula is based upon records produced in this litigation by
 4 Defendants' vendors for those Class Members who purchased clothing at their own expense
 5 from Defendants' third-party vendors during the Class Period. Settlement Agreement, ¶ 13.
 6 The Net Settlement Fund will be divided by the clothing purchases to determine the Clothing
 7 Purchases Payout Rate. *Id.* The total amount allocated to each Class Member will be the total
 8 of his or her identified Clothing Purchases during the applicable Class and PAGA Periods
 9 multiplied by the Clothing Purchases Payout Rate. *Id.* This allocation is fair and reasonable
 10 because it takes the extent of the injury of each Class Member into account and bases their
 11 claim amount on the amount actually expended on uniform clothing items during the Class
 12 Period. HVR Dec. ¶ 39.

13 Twenty-five percent (25%) of the \$100,000 PAGA allocation will be distributed to the
 14 Aggrieved Employees on a pro-rata basis based upon the number of pay periods that the
 15 Aggrieved Employee made purchases during the PAGA Period. The Labor and Workforce
 16 Development Agency shall receive a check for 75% of the PAGA settlement amount.
 17 Settlement Agreement, ¶ 13.

18 The payments to the Class Members and Aggrieved Employees shall be non-taxable,
 19 and a form 1099 will be issued by the administrator for such payments. *Id.*

20 The Class Members, who do not opt-out of the settlement, and all Aggrieved
 21 Employees shall receive a direct mail check of the amount of their claim and will have 180
 22 days to cash their checks. *Id.* If any funds remain after the expiration date of the distribution,
 23 any residual funds will be distributed to Legal Aid at Work as a *cy pres* beneficiary. *Id.*

24 E. Settlement Administration.

25 Plaintiffs sought and received bids from four respected Claims Administrators,
 26 including Simpluris, Rust, JND Legal Administration, and Atticus Administration. HVR
 27 Dec. at ¶ 40. The terms of the quotes included sending a postcard notice to approximately
 28

1 12,500 Class Members, establishing a website with the full notice and other important
 2 documents, maintaining a toll-free number, tax accounting, and sending direct mail checks to
 3 class members. *Id.* The administrator with the lowest bid was Atticus Administration
 4 (“Atticus”), with a quote of \$37,200. *Id.* The parties agreed in the Settlement Agreement to
 5 use Atticus. Settlement Agreement, ¶ 10 (j).

6 Over the last two years, Plaintiffs’ counsel has successfully worked with Atticus for
 7 settlement administration of two PAGA settlements and three class action settlements. HVR
 8 Dec., ¶ 41. A copy of Atticus’ Data Security Information & Privacy Policy is attached as
 9 Exhibit 3 to the HVR Dec. Atticus maintains insurance with AAA rated insurance carriers
 10 for professional liability and cybersecurity. HVR Dec., ¶ 42. It is Atticus’ policy to warrant
 11 the work performed on all errors and omissions, on all projects, including distribution of
 12 funds to class members, without additional charges to their clients. *Id.*

13 F. Notice and Settlement Administration.

14 Atticus will distribute the Post Card Notices of Settlement (attached as Ex. B to the
 15 Settlement Agreement) via U.S. mail and email (where email addresses are available), re-
 16 mail any Notice Packets returned as non-deliverable but with forwarding addresses, and re-
 17 mail the Notice Packet to any new address obtained by way of skip-trace. Settlement
 18 Agreement, ¶ 26. Atticus will also receive and process requests for exclusion forms,
 19 calculate the settlement payments, and prepare and issue all disbursements to participating
 20 Class Members and Aggrieved Employees, Service Awards to Plaintiffs, payment to the
 21 LWDA payment, payment to Class Counsel for fees and costs, and payment to itself for fees
 22 in administering the settlement. *Id.*

23 Atticus will also create a website for the Settlement, which will allow Class Members
 24 to view the Class Notice (attached as Ex. A to the Settlement Agreement), the Settlement
 25 Agreement, and all papers filed by Class Counsel to obtain preliminary and final approval of
 26 the Settlement Agreement. *Id.* The Settlement Administrator will also establish a toll-free
 27 call center for telephone inquiries from Class Members. *Id.*

1 G. Requests for Exclusion from the Settlement.

2 The Settlement Administrator shall administer the receipt of any and all requests for
 3 exclusion from the Action. Any Class Member who submits a valid and timely request for
 4 exclusion shall not be bound by the terms of the Settlement Agreement. Any Class Member
 5 who desires to be excluded from the Action must send a written request for exclusion to the
 6 Settlement Administrator with a postmark dated no later than 30 calendar days prior to the
 7 Final Hearing. In such request, the Class Member must set forth his or her full name,
 8 address, telephone number and email address (if available), along with a statement that he or
 9 she wishes to be excluded. The Settlement Administrator shall provide a list of the names
 10 and addresses of each Class Member who submitted a valid exclusion to the Parties no later
 11 than 21 court days prior to the Final Hearing. Class Members who request to be excluded
 12 from the Settlement shall nevertheless be bound by the release of claims under PAGA.

13 Settlement Agreement ¶ 32.

14 H. Objections to the Settlement.

15 Any Class Member who intends to object to the fairness of this settlement must (1)
 16 file a written objection with the Court no later than 30 calendar days prior to the Final
 17 Hearing and (2) mail or personally deliver a copy of the written objection to Class Counsel
 18 and Defendants' Counsel on the same day as the objection is sent to the Court. The Court
 19 will deem an objection filed on the day it is received by the Court, not necessarily when the
 20 objection is postmarked. In the written objection, the Class Member must state: his or her
 21 full name, address, telephone number, and email address (if available); the reasons for his or
 22 her objection; and whether he or she intends to appear at the Final Hearing on his or her own
 23 behalf or through counsel. Further, the Class Member must attach to his or her objection all
 24 evidence supporting the objection. Any Class Member who does not file a valid and timely
 25 objection to the settlement shall be barred from seeking review of the settlement by appeal or
 26 otherwise. Settlement Agreement ¶ 33.

1 I. Attorney's Fees and Costs Are Reasonable.

2 In their fee motion to be submitted with the final approval papers, Class Counsel shall
 3 seek an award of attorneys' fees not to exceed Three Hundred Sixteen Thousand Six
 4 Hundred Sixty-Six Dollars and Zero Cents (\$316,666.00) (33.33 % of the Gross Settlement
 5 Common Fund). This amount will cover all work performed to date and all work to be
 6 performed in connection with the approval by the Court of the Settlement Agreement and the
 7 final conclusion of this Action. Settlement Agreement ¶ 18; HVR Dec., ¶ 43.

8 The percentage fee is also reasonable on a lodestar basis. Based on Plaintiffs' current
 9 lodestar of \$375,135, the fees being sought of \$316,666 are less than the lodestar. Plaintiffs
 10 will be spending additional time on the case through the settlement administration process
 11 and seeking final approval, which will further increase their lodestar. HVR Dec., ¶ 44.

12 When a district court exercises diversity jurisdiction over a case consisting of
 13 exclusively California claims, as here, California substantive law applies to the calculation of
 14 the attorney fee award. *See, Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478-1479
 15 (9th Cir. 1995) (finding state law to be applicable in "in determining not only the right to
 16 fees, but also the method of calculating the fees."); *see also, Rodriguez v. Disner*, 688 F.3d
 17 645, 653 fn. 6 (9th Cir. 2012) ("If ... we were exercising our diversity jurisdiction, state law
 18 would control whether an attorney is entitled to fees and the method of calculating such
 19 fees"); *Gonzalez v. Southern Wine & Spirits of Am., Inc.*, 555 Fed.Appx. 704, 704-705 (9th
 20 Cir. 2014) (finding district court abused its discretion in applying federal law instead of
 21 California substantive law to the calculation of attorneys' fees, holding that, because the
 22 court exercised diversity jurisdiction, California substantive law should have been applied).

23 Here, Plaintiffs' claims arise exclusively from California law. Accordingly, the Court
 24 should apply the method for calculating attorney's fees as set forth by California
 25 jurisprudence. *See, e.g., Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503-506
 26 (2016) (percentage method with a lodestar crosscheck is appropriate in common fund cases).
 27 Furthermore, use of the percentage method in common fund cases appears to be dominant in
 28

1 the Ninth Circuit. *See, e.g., Vizcaino*, 290 F.3d 1043, 1047; *Six (6) Mexican Workers v.*
 2 *Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). The advantages of using the
 3 percentage method have been described thoroughly by other courts. *See, e.g., In re Activision*
 4 *Sec. Litig.*, 723 F.Supp. 1373, 1374-77 (N.D. Cal. 1989).

5 In California, federal and state courts have customarily approved payments of
 6 attorney's fees amounting to one-third or more of the common fund in comparable wage and
 7 hour class actions. *See, e.g., Soto et al. v. O.C. Communications, Inc., et al.*, Case No. 3:17-
 8 cv-00251-VC, ECF 304 (N.D. Cal. Oct. 23, 2019) (approving attorneys' fees of one-third of
 9 the gross settlement in hybrid FLSA/Rule 23 settlement). Further, under the circumstances
 10 present here, upward adjustment from the Ninth Circuit "benchmark" of 25% is warranted
 11 not only by the application of California fee award jurisprudence, but by the circumstances
 12 of the case. Plaintiffs obtained the full amount of expense reimbursements owed to class
 13 members plus penalties in a prompt manner, which is an excellent result to get Class
 14 Members paid now rather than having to wait for years of protracted litigation.

15 Class Counsel shall also submit an application for the reimbursement of costs and
 16 expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00).
 17 This amount will cover all costs and expenses incurred to date or to be incurred. This amount
 18 shall come from the Gross Settlement Common Fund. Settlement Agreement, ¶ 18.

19 The amount of fees and costs requested are clearly set forth in the Notice.
 20 Accordingly, Plaintiffs respectfully request the Court preliminarily approve the terms of the
 21 settlement, including the request for fees and costs. Any objections by Class Members to the
 22 request for fees and costs may be considered by the Court at final approval.

23 J. Service Awards to Representative Plaintiffs

24 Named plaintiffs in class action litigation are eligible for reasonable service awards.
 25 *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) ("Courts routinely approve
 26 incentive awards to compensate named plaintiffs for the services they provided and the risks
 27 they incurred during the course of the class action litigation"); *Van Vranken v. Atl. Richfield*
 28

1 *Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work in
 2 class action). From the Gross Settlement Comon Fund, each Representative Plaintiff will be
 3 paid Ten Thousand Dollars and Zero Cents (\$10,000.00) as a service award for their time
 4 and efforts as Representative Plaintiffs. These service payment awards are in addition to their
 5 rights to payments provided in the Settlement for initiating and pursuing the Action,
 6 undertaking the risk of liability for attorneys' fees and expenses in the event they were
 7 unsuccessful in the prosecution of the Action, and granting the general release under the
 8 Settlement. Settlement Agreement, ¶ 16.

9 In agreeing to serve as Class Representatives, these individuals formally agreed to
 10 accept the responsibilities of representing the interests of all Class Members and Aggrieved
 11 Employees. HVR Dec. ¶ 45. Each Named Plaintiff participated fully in discovery, worked
 12 closely with Class Counsel, and had her deposition taken by Defendants. *Id.* Defendants do
 13 not oppose the requested payments to these representatives as reasonable service awards. *Id.*

14 **K. Cy Pres Recipient.**

15 The parties propose that any funds remaining in the Net Settlement Fund after the 180
 16 day void date for checks be distributed *cy pres* to Legal Aid at Work, which is a nonprofit
 17 organization that provides legal services assisting low-income, working families and
 18 promotes better understanding of the conditions, policies, and institutions that affect the
 19 well-being of workers and their families and communities. HVR Dec. at ¶ 46.

20 **L. Timeline.**

21 Plaintiffs have submitted a proposed order setting forth the proposed schedule of
 22 events from here through final approval. HVR Dec., ¶ 47 and [Proposed] Order. Plaintiffs
 23 submit that the proposed schedule complies with Rule 23 and secures the benefits for Class
 24 Members in a timely fashion. Plaintiffs propose a final approval hearing date of November
 25 21, 2024.

26 **M. CAFA / PAGA Notice.**

27 Within 10 days after the proposed settlement is filed in court (28 U.S.C. §1715(b)),
 28

1 Defendants will provide notice upon the appropriate State official of each State in which a
 2 class member resides and the appropriate Federal official, a notice of the proposed
 3 settlement. Plaintiffs are submitting this motion concurrently with filing on the LWDA.

4 N. Comparable Cases.

5 Plaintiffs provide two comparable cases. HVR Dec., ¶ 48. The case of *Ping v. See's*
 6 *Candy Shops, Inc., et al.*, County of Butte No. 20CV01023, involved claims similar to here
 7 in that Plaintiffs sought reimbursement for purchasing uniform clothing to comply with
 8 Defendant's dress code policy. The scope of release was more expansive than here as wage
 9 and hour violations for statutory penalties were alleged, and the release included failure to
 10 provide uniforms and/or reimbursement for uniform-related expenses; failure to pay
 11 minimum wages; failure to timely pay wages due at termination; and failure to furnish
 12 accurate itemized wage statements; including without limitation, claims under the California
 13 Labor Code sections 201, 202, 203, 204, 210, 218.5, 223, 226, 226.3, 558, 1194, 1194.2,
 14 1197 et seq., 2802, Bus. & Prof. Code section 17200 et seq., and Labor Code section 2698.

	The See's Settlement	This Proposed Settlement
Total settlement fund	\$1,350,000	\$950,000
Total no. of class members	6,851	12,555
Total no. of class members who received notice and not returned as undeliverable	6,737	Unknown at this time
Method(s) of Notice	U.S. mail	U.S. mail and email
No. and percentage of Claim Forms submitted	Not applicable	Not applicable
Average recovery per class member	\$42.96	\$37.70 / \$38.70
Amount of uncashed checks	2,350	Amount of uncashed checks is unknown at this time
Administrative Costs	\$50,000	Up to \$45,000; current bid is \$37,200
Attorney's Fees and Costs	\$380,000 in fees and \$11,400 in costs	\$316,666 in fees and up to \$20,000 in costs
Total Exposure if Plaintiffs and the Class Prevailed	\$18,341,598	\$2,170,709

1 The case of *Nucci v. Rite Aid, et al.*, N.D. Cal. No. 19-cv-01434-LHK, involved
 2 claims similar to here in that Plaintiffs sought reimbursement for purchasing uniform
 3 clothing to comply with Defendants' dress code policy. Plaintiffs' causes of action and scope
 4 of release were more expansive than here and included Failure to Indemnify Business
 5 Expenses (Labor Code §2802); Failure to Reimburse for Required Uniforms (IWC Wage
 6 Order 7, § 9 (A)); Unfair Business Practices (Business and Professions Code § 17200, et
 7 seq.); Injunction; Failure to Pay Minimum Wage (Labor Code §§ 1194, 1194.2, 1197, IWC
 8 Wage Order No. 7, § 4(A); Failure to Furnish Accurate Wage Statements (Labor Code §
 9 226); Waiting Time Penalties (Labor Code §§ 201, 202, and 203); and Penalties under the
 10 Private Attorneys General Act ("PAGA") (Labor Code § 2698, et seq.).

	The Rite Aid Settlement	This Proposed Settlement
Total settlement fund	\$12,000,000	\$950,000
Total no. of class members	39,451	12,555
Total no. of class members who received notice and not returned as undeliverable	29,103	Unknown at this time
Method(s) of Notice	U.S. mail and email	U.S. mail and email
No. and percentage of Claim Forms submitted	Not applicable	Not applicable
Average recovery per class member	\$308.31	\$37.70 / \$38.70
Amount of uncashed checks	6,225	Amount of uncashed checks is unknown at this time
Administrative Costs	\$75,000	Up to \$45,000; current bid is \$37,200
Attorney's Fees and Costs	\$3,999,600 in fees and \$300,940 in costs	\$316,666 in fees and up to \$20,000 in costs
Total Exposure if Plaintiffs and the Class Prevailed	\$46,230,694	\$2,170,709

VI. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, enter the proposed preliminary approval order submitted herewith, and set a final approval hearing date.

Date: June 6, 2024

Respectfully submitted,

/s/ Hallie Von Rock

Hallie Von Rock
AIMAN-SMITH & MARCY PC
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on June 6, 2024. Service will be accomplished on all parties by the Court's CM/ECF system.

Dated: June 6, 2024

/s/ Hallie Von Rock

Hallie Von Rock